

1 William C. Haggerty, Esq., Bar No. 76652
bill@fwhb.com
2 Katherine M. Harwood, Esq., Bar No. 225202
kharwood@fwhb.com
3 FORD, WALKER, HAGGERTY & BEHAR
4 One World Trade Center, 27th Floor
Long Beach, CA 90831
5 Tel: (562) 983-2500; Fax: (562) 590-3573

6 Wasif H. Qureshi, Esq., Texas Bar No. 24048155 (*pro hac vice*)
wqureshi@jw.com
7 JACKSON WALKER LLP
1401 McKinney, Suite 1900
8 Houston, TX 77010
Tel: (713) 752-4521; Fax: (713) 752-4221

9 Blake T. Dietrich, Esq., Texas Bar No. 24087420 (*pro hac vice*)
bdietrich@jw.com
10 JACKSON WALKER LLP
2323 Ross Ave., Suite 600
11 Dallas, TX 75201
12 Tel: (214) 953-6000; Fax: (214) 953-5822

13 *Attorneys for Plaintiff Principal Lighting Group, LLC*

14
15 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA
16 **WESTERN DIVISION**

17 **Principal Lighting Group, LLC,**

18 Plaintiff,

19 vs.

20 **The Sloan Company, Inc. d/b/a/
SloanLED**

21 Defendant.
22
23
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Case No. CV 18-6449-GW(KSx)

PROTECTIVE ORDER

Action Filed: July 26, 2018

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1. PURPOSE AND LIMITS OF THIS ORDER

Discovery in this action is likely to involve confidential, proprietary, or private information requiring special protection from public disclosure and from use for any purpose other than this litigation. Thus, the Court enters this Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it gives from public disclosure and use extends only to the specific material entitled to confidential treatment under the applicable legal principles. This Order does not automatically authorize the filing under seal of material designated under this Order. Instead, the parties must comply with L.R. 79-5 if they seek to file anything under seal. This Order does not govern the use at trial of material designated under this Order.

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2. DESIGNATING PROTECTED MATERIAL

2.1. **Over-Designation Prohibited.** Any party or non-party who designates information or items for protection under this Order as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” (a “designator”) must only designate specific material that qualifies under the appropriate standards. To the extent practicable, only those parts of documents, items, or oral or written communications that require protection shall be designated. Designations with a higher confidentiality level when a lower level would suffice are prohibited. Mass, indiscriminate, or routinized designations are prohibited. Unjustified designations expose the designator to sanctions, including the Court’s striking all confidentiality designations made by that designator. Designation under this Order is allowed only if the designation is necessary to protect material that, if disclosed to persons not authorized to view it, would cause competitive or other recognized harm. Material may not be designated if it has been made public, or if designation is otherwise unnecessary to protect a secrecy interest. If a designator

1 learns that information or items that it designated for protection do not qualify for
2 protection at all or do not qualify for the level of protection initially asserted, that
3 designator must promptly notify all parties that it is withdrawing the mistaken
4 designation.

5 **2.2. Manner and Timing of Designations.** Designation under this Order
6 requires the designator to affix the applicable legend (“CONFIDENTIAL” or
7 “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY”) to each
8 page that contains protected material. For testimony given in deposition or other
9 proceeding, the designator shall specify all protected testimony and the level of
10 protection being asserted. It may make that designation during the deposition or
11 proceeding, or may invoke, on the record or by written notice to all parties on or
12 before the next business day, a right to have up to 21 days from the deposition or
13 proceeding to make its designation.

14 **2.2.1.** A party or non-party that makes original documents or
15 materials available for inspection need not designate them for protection until after
16 the inspecting party has identified which material it would like copied and
17 produced. During the inspection and before the designation, all material shall be
18 treated as HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY.
19 After the inspecting party has identified the documents it wants copied and
20 produced, the producing party must designate the documents, or portions thereof,
21 that qualify for protection under this Order.

22 **2.2.2.** Parties shall use reasonable efforts to give advance notice if
23 they expect a deposition or other proceeding to include designated material so that
24 the other parties can ensure that only authorized individuals are present at those
25 proceedings when such material is disclosed or used. The use of a document as an
26 exhibit at a deposition shall not in any way affect its designation. Transcripts
27 containing designated material shall have a legend on the title page noting the
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1 presence of designated material, and the title page shall be followed by a list of all
2 pages (including line numbers as appropriate) that have been designated, and the
3 level of protection being asserted. The designator shall inform the court reporter of
4 these requirements. Any transcript that is prepared before the expiration of the 21-
5 day period for designation shall be treated during that period as if it had been
6 designated HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
7 unless otherwise agreed. After the expiration of the 21-day period, the transcript
8 shall be treated only as actually designated.

9 **2.3. Inadvertent Failures to Designate.** An inadvertent failure to designate
10 does not, standing alone, waive protection under this Order. Upon timely assertion
11 or correction of a designation, all recipients must make reasonable efforts to ensure
12 that the material is treated according to this Order.

13 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 All challenges to confidentiality designations shall proceed under L.R. 37-1
15 through L.R. 37-4.

16 **4. ACCESS TO DESIGNATED MATERIAL**

17 **4.1. Basic Principles.** A receiving party may use designated material only
18 for this litigation. Designated material may be disclosed only to the categories of
19 persons and under the conditions described in this Order.

20 **4.2. Disclosure of CONFIDENTIAL Material Without Further**
21 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
22 designator, a receiving party may disclose any material designated
23 CONFIDENTIAL only to:
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25 **4.2.1.** The receiving party’s outside counsel of record in this
26 action and employees of outside counsel of record to whom disclosure is reasonably
27 necessary;
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1 **4.2.2.** The officers, directors, and employees of the receiving
2 party to whom disclosure is reasonably necessary, and who have signed the
3 Agreement to Be Bound (Exhibit A);

4 **4.2.3.** Experts retained by the receiving party's outside counsel of
5 record to whom disclosure is reasonably necessary, and who have signed the
6 Agreement to Be Bound (Exhibit A);

7 **4.2.4.** The Court and its personnel;

8 **4.2.5.** Outside court reporters and their staff, professional jury or
9 trial consultants, and professional vendors to whom disclosure is reasonably
10 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

11 **4.2.6.** The author or recipient of a document containing the
12 material, or a custodian or other person who otherwise possessed or knew the
13 information.

14 **4.3. Disclosure of HIGHLY CONFIDENTIAL – OUTSIDE**
15 **ATTORNEYS' EYES ONLY Material Without Further Approval.** Unless
16 permitted in writing by the designator, a receiving party may disclose material
17 designated HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY
18 without further approval only to:

19 **4.3.1.** The receiving party's outside counsel of record in this
20 action and employees of outside counsel of record to whom it is reasonably
21 necessary to disclose the information;

22 **4.3.2.** Experts retained by the receiving party's outside counsel of
23 record to whom disclosure is reasonably necessary, and who have signed the
24 Agreement to Be Bound (Exhibit A);

25 **4.3.3.** The Court and its personnel;

1 **4.3.4.** Outside court reporters and their staff, professional jury or
2 trial consultants, and professional vendors to whom disclosure is reasonably
3 necessary, and who have signed the Agreement to Be Bound (Exhibit A); and

4 **4.3.5.** The author or recipient of a document containing the
5 material, or a custodian or other person who otherwise possessed or knew the
6 information.

7 **4.4. Procedures for Approving or Objecting to Disclosure of**
8 **CONFIDENTIAL or HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’**
9 **EYES ONLY Material to Experts.** Unless agreed to in writing by the designator:

10 **4.4.1.** A party seeking to disclose to an expert retained by outside
11 counsel of record any information or item that has been designated
12 CONFIDENTIAL or HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’
13 EYES ONLY must first make a written request to the designator that (1) identifies
14 the general categories of CONFIDENTIAL or HIGHLY CONFIDENTIAL –
15 ATTORNEY EYES ONLY information that the receiving party seeks permission to
16 disclose to the expert, (2) sets forth the full name of the expert and the city and state
17 of his or her primary residence, (3) attaches a copy of the expert’s current resume,
18 (4) identifies the expert’s current employer(s), (5) identifies each person or entity
19 from whom the expert has received compensation or funding for work in his or her
20 areas of expertise (including in connection with litigation) in the past five years, and
21 (6) identifies (by name and number of the case, filing date, and location of court)
22 any litigation where the expert has offered expert testimony, including by
23 declaration, report, or testimony at deposition or trial, in the past five years. If the
24 expert believes any of this information at (4) - (6) is subject to a confidentiality
25 obligation to a third party, then the expert should provide whatever information the
26 expert believes can be disclosed without violating any confidentiality agreements,
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1 and the party seeking to disclose the information to the expert shall be available to
2 meet and confer with the designator regarding any such confidentiality obligations.

3 **4.4.2.** A party that makes a request and provides the information
4 specified in paragraphs 4.4.1 may disclose the designated material to the identified
5 expert unless, within seven days of delivering the request, the party receives a
6 written objection from the designator providing detailed grounds for the objection.

7 **4.4.3.** All challenges to objections from the designator shall
8 proceed under L.R. 37-1 through L.R. 37-4.

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10 **5. PROSECUTION BAR**

11 Absent written consent from the designator, any individual who receives
12 HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
13 information shall not be involved in the prosecution of patents or patent applications
14 concerning the field of the invention of the patents-in-suit for the receiving party or
15 its acquirer, successor, predecessor, or other affiliate during the pendency of this
16 action and for one year after its conclusion, including any appeals. “Prosecution”
17 means drafting, amending, advising on the content of, or otherwise affecting the
18 scope or content of patent claims or specifications. These prohibitions shall not
19 preclude counsel from participating in post-grant challenges, *ex parte*
20 reexaminations, *inter partes* review, or other post-issuance proceedings to challenge
21 or defend the validity of any patent, but counsel may not participate in the drafting
22 of amended claims in any such proceedings.

23 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
24 **PRODUCED IN OTHER LITIGATION**

25 **6.1. Subpoenas and Court Orders.** This Order in no way excuses
26 noncompliance with a lawful subpoena or court order. The purpose of the duties
27 described in this section is to alert the interested parties to the existence of this
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1 Order and to give the designator an opportunity to protect its confidentiality
2 interests in the court where the subpoena or order issued.

3 **6.2. Notification Requirement.** If a party is served with a subpoena or a
4 court order issued in other litigation that compels disclosure of any information or
5 items designated in this action as CONFIDENTIAL or HIGHLY CONFIDENTIAL
6 – OUTSIDE ATTORNEYS’ EYES ONLY, that party must:

7 **6.2.1.** Promptly notify the designator in writing. Such
8 notification shall include a copy of the subpoena or court order;

9 **6.2.2.** Promptly notify in writing the party who caused the
10 subpoena or order to issue in the other litigation that some or all of the material
11 covered by the subpoena or order is subject to this Order. Such notification shall
12 include a copy of this Order; and

13 **6.2.3.** Cooperate with all reasonable procedures sought by the
14 designator whose material may be affected.

15 **6.3. Wait For Resolution of Protective Order.** If the designator timely
16 seeks a protective order, the party served with the subpoena or court order shall not
17 produce any information designated in this action as CONFIDENTIAL or HIGHLY
18 CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY before a
19 determination by the court where the subpoena or order issued, unless the party has
20 obtained the designator’s permission. The designator shall bear the burden and
21 expense of seeking protection of its confidential material in that court.

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23 **7. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

24 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
25 designated material to any person or in any circumstance not authorized under this
26 Order, it must immediately (1) notify in writing the designator of the unauthorized
27 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
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1 designated material, (3) inform the person or persons to whom unauthorized
2 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
3 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

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5 **8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
6 **PROTECTED MATERIAL**

7 **8.1.** When a producing party gives notice that certain inadvertently produced
8 material is subject to a claim of privilege or other protection, the obligations of the
9 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
10 This provision is not intended to modify whatever procedure may be established in
11 an e-discovery order that provides for production without prior privilege review
12 pursuant to Federal Rule of Evidence 502(d) and (e).

13 **9. FILING UNDER SEAL**

14 Without written permission from the designator or a Court order, a party may
15 not file in the public record in this action any designated material. A party seeking
16 to file under seal any designated material must comply with L.R. 79-5. Filings may
17 be made under seal only pursuant to a court order authorizing the sealing of the
18 specific material at issue. The fact that a document has been designated under this
19 Order is insufficient to justify filing under seal. Instead, parties must explain the
20 basis for confidentiality of each document sought to be filed under seal. Because a
21 party other than the designator will often be seeking to file designated material,
22 cooperation between the parties in preparing, and in reducing the number and extent
23 of, requests for under seal filing is essential. If a receiving party's request to file
24 designated material under seal pursuant to L.R. 79-5 is denied by the Court, then the
25 receiving party may file the material in the public record unless (1) the designator
26 seeks reconsideration within four days of the denial, or (2) as otherwise instructed
27 by the Court.
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Within 60 days after the final disposition of this action, each party shall return all designated material to the designator or destroy such material, including all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any designated material. The receiving party must submit a written certification to the designator by the 60 day deadline that (1) identifies (by category, where appropriate) all the designated material that was returned or destroyed, and (2) affirms that the receiving party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the designated material. This provision shall not prevent counsel from retaining an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain designated material. Any such archival copies remain subject to this Order.

IT IS SO ORDERED.

DATED: October 4, 2018

George H. W.

Hon. George H. Wu
United States District Judge

EXHIBIT A
AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of _____ [insert formal name of the case and the number and initials assigned to it by the court]. I agree to comply with and to be bound by all the terms of this Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment for contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing this Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[printed name]